

STATE OF MICHIGAN  
COURT OF APPEALS

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CITIZENS INSURANCE COMPANY OF  
AMERICA, SUBROGEE OF ROYAL LINEN,  
INC.,

Plaintiff-Appellant,

v

CONSUMERS ENERGY COMPANY,

Defendant-Appellee.

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UNPUBLISHED

May 24, 2005

No. 252442

Cheboygan Circuit Court

LC No. 03-007178-CZ

Before: Murphy, P.J., and White and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order that granted defendant summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's insured suffered substantial property damage as a result of a fire that was allegedly caused by defendant's failure to properly maintain and repair its power lines. At issue on appeal is whether the trial court erred in determining that plaintiff's action was barred by the three-year statute of limitations. The interpretation and application of a statute of limitations presents a question of law, which is reviewed de novo on appeal. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A trial court's summary disposition ruling is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Although plaintiff contends that the four-year limitations period in MCL 440.2725 applied, article two of the UCC does not apply to the sale of electricity. *Klapp v United Ins Group Agency*, 259 Mich App 467, 471; 674 NW2d 736 (2003); *Williams v Detroit Edison Co*, 63 Mich App 559, 564; 234 NW2d 702 (1975). Electricity is a service rather than a "good." *Williams, supra* at 564.

Additionally, plaintiff's breach of contract claim was barred by the three-year limitations period applicable to actions in which a plaintiff seeks to recover damages to property based on a duty imposed by law. *Huhtala v Travelers Insurance Co*, 401 Mich 118, 126-127; 257 NW2d 640 (1977). "The obligation of a public utility to supply electricity at an appropriate voltage (like the obligation of an innkeeper to protect his guests against assault) does not depend on the agreement of the parties but arises as a matter of law independent of the terms of their

agreement.” *Id.* at 129. Further, “[t]he relationship of the supplier of services with the consumer, although contractual in inception, [gives] rise to a duty imposed by law on the supplier, apart from the terms of their agreement, to take reasonable safeguards to protect the consumer.” *Id.* at 130. The trial court in this case properly determined that plaintiff was attempting to enforce a duty implied by law and that the three-year limitations period applied. The parties may have had a contractual relationship in which plaintiff agreed to pay for and defendant agreed to supply electricity, but the duty to maintain and repair the powers lines in a workmanlike manner was an implied duty.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Michael R. Smolenski